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In re Application of :
Alfred A. Margaryan :
Application No. 10/054,328 :
Filed: January 21, 2002 :
Attorney Docket No. P000536-DES-TGG :

OFFICE OF PETITIONS
ON PETITION

This is a decision on the renewed petition under 37 CFR 1.137(b), filed July 23, 2007, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The application became abandoned for failure to timely reply to the Final Office action, mailed November 18, 2003, which set a shortened statutory period for reply of three (3) months. Accordingly, by operation of law, the above-identified application became abandoned on February 19, 2004. A Notice of Abandonment was mailed July 1, 2004.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(II)(C) and (D). This petition lacks item (3).

The Petition Decision mailed April 25, 2007 notes that item (3) was lacking from the petition filed June 6, 2006. That decision noted that the statement was signed by Ganjian who was not in a position to have first hand or direct knowledge of the facts and circumstances of the delay at issue. In the renewed petition petitioner agrees that Ganjian did not have such knowledge and was only executing the petition form. The decision also indicated the supplemental statement of unintentional delay signed by Mr. Illare was also not acceptable as the record indicated Mr. Illare was not in a position to have first hand or direct knowledge of the facts and circumstances of the delay at issue. The renewed petition attempts to establish that Mr. Illare did, in fact, have first hand knowledge of the facts of the delay.

The renewed petition states that Jack J. Illare, as the chairman of the board of directors of Nano Teknologies, the assignee at the time of abandonment, was directly responsible all patent related issues. The petition includes a copy of Illare's employment contract which set forth his duties to the company. The petitioner further states there were no third parties responsible for patent matters and thus Illare's statement of unintentional delay should be acceptable. This would appear to contradict the signed statement made by Illare which was included with the initial petition under 37 CFR 1.137(b) filed June 6, 2006. On page one of Illare's SUPPLEMENTAL STATEMENT ESTABLISHING UNINTENTIONAL DELAY, Illare states "I was a passive investor..." Page 2, lines 1-3 Illare states "Dr. Lindsay's responsibilities included the management of the company's day-to-day activities and the protection and maintenance of the company's assets including the company intellectual property." Illare's employment contract may have indicated he was responsible for patent related matters but it is clear from his statement that he was allowing Dr. Lindsay to do the actual patent related activities. Therefore Illare would have no first hand or direct knowledge of the facts and circumstances of the delay in filing a response to the final Office action. The renewed petition fairly well establishes that Illare had no knowledge of patent activities in regard to the instant application at the time of delay since Dr. Lindsay was allegedly hiding the fact that he was actually not responding to any inquires from the patent attorney, Mr. Beech.

Mr. Beech had some first hand knowledge of the circumstances surrounding the delay in filing the response to the final Office action but he was dependent on getting instructions from Dr. Lindsay. The petition indicates the application went abandoned since Mr. Beech received no instructions to respond to the final Office action. Mr. Beech has no direct knowledge of why Dr. Lindsay apparently decided to let the application go abandoned.

Petitioner must explain what efforts were made to further reply to the final Office action and further why no reply was filed. If no effort was made to further reply, then petitioner must explain why the delay in this application does not result from a deliberate course of action (or inaction). The record to date appears to indicate that Dr. Lindsay is the only person with first hand knowledge of the circumstances surrounding the lack of reply to the outstanding action.

The record also suggests that, for whatever reason, the failure to file a response to the outstanding Office action was intentional.

Petitioner may want to consider filing a petition under 37 CFR 1.137(a) for unavoidable abandonment of the application.

The renewed petition also states that the power of attorney in this application is to Peter Ganjian. The petition decision mailed April 25, 2007 indicated the new Power of Attorney filed June 6, 2006 was not proper since it was filed on behalf of the previous assignee. At the time the power of attorney was filed, assignment had transferred to AFO Research Inc. Any Power of Attorney request needs to be in the name of the actual assignee at the time of the request. Nano Teknologies, the indicated assignee was not the assignee at the time the June 6, 2006 Power of Attorney request was made. Despite Ganjian's statement to the contrary, he has not been properly give a Power of Attorney in the above-identified application. Should Ganjian desire to receive any future correspondence, an appropriate power of attorney must be submitted. While a courtesy copy of this decision is being mailed to Ganjian, all future correspondence will be mailed solely to the correspondence address of record until appropriate instructions are received.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
 Commissioner for Patents
 P. O. Box 1450
 Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
 Customer Service Window, Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

The centralized facsimile number is **(571) 273-8300**.

Telephone inquiries concerning this decision should be directed to the Carl Friedman at (571) 272-6842.

A handwritten signature in black ink, appearing to be 'Carl Friedman', with a long horizontal stroke extending to the right.

Carl Friedman
Petitions Examiner
Office of Petitions